

REMARKS

Claims 24-34 and 40-44, and 46-61 are pending in this application. Claims 1-23, 35-39, and 45 have been canceled. Claims 28 and 40 have been amended to correct the antecedent basis errors. Claims 58-61 have been added. Reconsideration of this application in light of the above amendments and the following remarks is requested.

Rejection[s] under 35 U.S.C. § 102**Claim 24**

Independent claim 24 recites:

A vertebral replacement implant for interposition in a space left by one or more removed vertebrae between adjacent intact vertebrae, comprising:
a tubular body having opposite ends and sized to span at least a portion of the space between the intact vertebrae;
a pair of endplate assemblies attached to each of the opposite ends of the body, each of the endplate assemblies having an end surface and a tubular portion defining a bore therethrough extending through the end surface; and
a basket disposed within at least one of the bores.

Claim 24 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,702,455 to Saggar ("Saggar")

The PTO provides in MPEP § 2131 that

"[t]o anticipate a claim, the reference must teach every element of the claim...."

Therefore, with respect to claim 24, to sustain this rejection the Saggar patent must contain all of the above claimed elements of the claim. However, contrary to the Examiner's position that all elements are disclosed in the Saggar reference, the latter reference does not disclose a basket disposed within at least one of the bores. The flat disc 17 of the Saggar patent referenced by the Examiner is clearly not a basket under any conventional meaning of the term. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

Claim 40

Independent claim 40 recites:

A graft containment device for use with a vertebral implant having an internal cavity, the graft containment device comprising:
a sidewall;
an open end; and
an engagement device for maintaining the graft containment device within the cavity of the vertebral implant.

Claim 40 was also rejected under 35 U.S.C. § 102(b) as being anticipated by Saggar.

Contrary to the Examiner's position that all elements are disclosed in the Saggar reference, the latter reference does not disclose a graft containment device for use with a vertebral implant having an internal cavity. Saggar does not disclose the graft containment device comprises a sidewall, an open end, and an engagement device for maintaining the graft containment device within the cavity of the vertebral implant. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

Claim 46

Independent claim 46 recites:

A tubular vertebral implant device for interposition between two vertebral endplates, the tubular vertebral implant device comprising
a tubular assembly having a sidewall; and
a graft containment device, having an open end, disposed in at least one end of the tubular assembly.

Claim 46 was also rejected under 35 U.S.C. § 102(b) as being anticipated by Saggar.

Contrary to the Examiner's position that all elements are disclosed in the Saggar reference, the latter reference does not disclose a graft containment device, having an open end, disposed in at least one end of the tubular assembly. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

Claim 54

Independent claim 54 recites:

A method of installing a vertebral implant device, the vertebral implant device having a supporting tubular member and a graft containment device adapted to be received within a portion of the tubular member, the method comprising:

- packing the graft containment device with bone growth promoting material;
- positioning the graft containment device in the tubular member; and
- implanting the vertebral implant device between a pair of vertebral endplates of a spine.

Claim 54 was also rejected under 35 U.S.C. § 102(b) as being anticipated by Saggar.

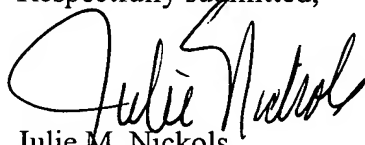
Contrary to the Examiner's position that all elements of claim 54 are disclosed in the Saggar reference, the latter reference does not disclose packing the graft containment device with bone growth promoting material and positioning the graft containment device in the tubular member. Therefore, the rejection is not supported by the Saggar reference and should be withdrawn.

Conclusion

It is clear from all of the foregoing that independent claims 24, 40, 46, 54, and 58 are in condition for allowance. Dependent claims 25-34, 41-44, 47-53, 55-57, and 59-61 depend from and further limit the independent claims and therefore are allowable as well.


An early formal notice of allowance of claims 24-34 and 40-44, and 46-61 is requested.

Respectfully submitted,


Julie M. Nickols
Registration No. 50,826

Dated: February 7, 2005
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972/739-8640
Facsimile: 214/200-0853
Client Matter No.: 31132.118
R97620.1

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 7, 2005.


Gayle Conner